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In The  
Supreme Court of the United States

OCTOBER TERM 1978

No. 79-152

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The Home Indemnity Company,  
Petitioner,  
vs.

Barbara A. Stillwell,  
Respondent  
and

R. E. Lee Electric Company, Inc.,  
Respondent,  
and

Heyl & Patterson International, Inc.,  
Respondent,  
and

Travelers Insurance Company,  
Respondent.

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Brief in Opposition to  
Petition for a Writ of Certiorari

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Harold Aryai Siegel  
16 Maplewood Court  
Post Office Box 25  
Greenbelt, MD 20770  
Attorney for Respondent  
R. E. Lee Electric Company

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STATEMENT OF THE CASE

The widow-respondent initiated a claim for death benefits under the Defense Base Act relative to the death of her husband while working on a Government subcontract issued to respondent R. E. Lee Electric Company for the electrical work on a housing project at the United States Naval Base in Guantanamo Bay, Cuba. Respondent Lee purchased insurance from petitioner, including workmen's compensation type coverage, but petitioner denied the coverage extended to work done at Guantanamo Bay. Applying principles of agency law, the Administrative Law Judge held that petitioner's coverage did extend to Guantanamo Bay.

The decision was appealed to the Benefits Review Board which affirmed the

decision against petitioner. The petitioner then appealed to the Sixth Circuit Court of Appeals which dismissed the appeal for want of jurisdiction on two grounds.

REASON FOR DENYING THE WRIT

The Court's attention is called to the fact that the United States Court of Appeals for the Sixth Circuit dismissed the Petition for Review for want of jurisdiction for two separate and distinct reasons.

First, the Sixth Circuit held that, whether through legislative oversight or intent, the plain language of the Defense Base Act is unambiguous and does not provide for direct review of Department of Labor compensation orders in any Court of Appeals. The Sixth

Circuit Opinion dwelled in great length on this point. In turn, Petitioner's entire request for a Writ of Certiorari addresses this one point.

Second, the Sixth Circuit held that even if this particular compensation order was reviewable in some Court of Appeals, the Sixth Circuit was not the proper Court. This second reason for denying jurisdiction appears very briefly in the next to last paragraph of the Opinion as follows:

"....Section 921 (c) provides that "any person adversely affected or aggrieved by a final order of the Board may obtain review of that order in the United States court of appeals for the circuit in which the injury occurred...." Guantanamo Bay, Cuba, is not

included in any judicial circuit. More particularly, for our purpose, Guantanamo Bay is not in the Sixth Circuit. Therefore, if we apply S921 (c) as the petitioner suggests judicial review of the case in any forum may be foreclosed."

(emphasis supplied)

Petitioner and all Respondents stipulated below, at the hearing before the Administrative Law Judge, "that at the time of said injury the said deceased was an employee of the R. E. Lee Electric Company and working at and on the United States Naval Base at Guantanamo Bay, Cuba." (Stipulation No. 3) (Appendix C, Page 18a of Petition).

The "composition" of the Sixth

Circuit Court of Appeals is Kentucky, Michigan, Ohio, and Tennessee. (28 USC 41)

Clearly, then, even if Petitioner was to prevail on the point that a Court of Appeals is the next step in the chain authorized to hear an appeal of this Department of Labor compensation order, issued under the Defense Base Act, 28 USC 41 does not give the Sixth Circuit jurisdiction over injuries sustained at Guantanamo Bay, Cuba. This being a fact, granting Petitioner's writ would serve no useful purpose in this particular case. If the statutory scheme in the present wording of the Defense Base Act is not what Congress intended, the Department of Labor can initiate action to have the statute amended by Congress.

The Eight Circuit Court of Appeals had occasion to thoroughly consider the exact question of whether, during appellate review of compensation orders issued under the Longshoremen's and Harbour Workers' Compensation Act (the provisions of which were incorporated, in part, into the Defense Base Act), appellant's choice of the wrong forum relates to jurisdiction or just to venue. In deciding that the place of the injury was just East of the middle of the Mississippi River, slightly outside the statutory boundaries of the lower court, the Eighth Circuit said:

"Considering the real character of this proceeding as defined in subdivision (b), the apparently meticulous care with which the use of various courts is defined in the



several sections of the Act, and the emphatically expressed limitations in subdivision (d), we think the requirement that the proceeding be in the Court of the district wherein the injury or death occurred is not merely one of venue but is jurisdictional."

Bassett, Deputy Com'r et al v Massman Const. Co., 8 Cir, 120 F. 2d 230 (1941), cert den 314 US 648, 62 S.Ct. 92, 86 L. Ed. 520

This position was followed in the Third and Ninth Circuit Court of Appeals, in the cases of Atlantic Ship Rigging Co. v McLellan, 288 F. 2d 589 (1961) and Continental Fire and Casualty Ins. Co. v O'Leary, 236 F. 2d 282 (1956), respectively, as well as by several lower Courts.

Although these case were decided before the 1972 Amendments to the Acts

involved, their teaching remains sound: to wit, the statutory scheme still is to confer jurisdiction to review this compensation order only on the Court having jurisdiction over the place of the injury.

Finally, Appellate Rule 15 provides that the Petition for Review of the Administrative Law Judge decision must be filed with the Clerk of the Court of Appeals authorized to review such order. The Sixth Circuit correctly decided that it was not so authorized.

#### CONCLUSION

The Sixth Circuit reached its decision based on two independently correct theories supporting its finding that it lacked jurisdiction. Since Petitioner only argues that one of the

theories is in error, the writ should  
not be granted.

Respectfully submitted,

Harold Aryai Siegel  
16 Maplewood Court  
P. O. Box 25  
Greenbelt, MD 20770  
Attorney for Respondent  
R. E. Lee Electric Co.